



WEB COPY



W.P.No.22528 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.22528 of 2015

K.P.R.Raja Amirth Sivasubramanian,
Forester,
Dindigul Forest Division,
Dindigul.

...Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep by Secretary to Government,
Environment and Forest Department,
Secretariat, Chennai – 9.
2. The Principal Chief Conservator of
Forest and Head of Forest Department,
Panagal Building,
Anna Salai, Saidapet,
Chennai – 15.
3. The Conservator of Forest,
Dindigul Circle,
Dindigul.
4. The District Forest Officer,
Dindigul Forest Division,
Dindigul.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus, calling for the



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records on the file of the second respondent and the relating to order in 1) Pro.AB1/17618/2014 dated 31.07.2014, to the limited extent of restricting the grant of monetary benefits only from the date of joining duty of the petitioner as Forester and the proceedings of the fourth respondent in 2) S.O.No.15/2011 P2 Na.Ka.No.P2/8174/2010 dated 03.02.2011, quash the same and issue consequential directions to the respondents to i) regularise the leave period of the petitioner from 11.11.2008 to 11.05.2009 as unearned leave on Medical Certificate and from 12.05.2009 to 08.08.2010 as compulsory wait/duty period, ii) to grant monetary benefits consequent to retrospective promotion as forester with effect from 04.09.2009 and restore/reconstruct the service register of the petitioner for implementation of the above said directions and grant retirement and pensionary benefits.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the order dated 31.07.2014, passed by the second respondent in Pro.AB1/17618/2014, and the order dated 03.02.2011, passed by the fourth respondent in S.O.No.15/2011 P2 Na.Ka.No.P2/8174/2010, thereby rejecting the request of the petitioner to regularise his leave period from 11.11.2008 to 11.05.2009 as unearned leave on Medical Certificate and from 12.05.2009 to 08.08.2010 as compulsory wait/duty period, ii) to grant



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monetary benefits consequent to retrospective promotion as forester with effect from 04.09.2009.

2. The petitioner was employed as Forest Guard during the year 2008. When he was on the verge of being empanelled for promotion as Forester in the panel for the year 2008-2009. It was deferred due to the disciplinary proceedings initiated against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, by the proceeding dated 12.11.2008. The charge against the petitioner is that irregularities pertaining to his service as Forest Guard at Ottanchatram forest check post.

3. Though the petitioner challenged the disciplinary proceeding in W.P.(MD)No.7831 of 2009, while pending the writ petition, the fourth respondent passed final order dated 05.04.2010, thereby reversing the petitioner. It was challenged by the petitioner in W.P.(MD).No.5417 of 2010 and this Court set aside the impugned order and issued direction that the right of the petitioner for promotion shall be duly considered from the appropriate stage.



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4. Thereafter, the second respondent had issued orders dated 31.07.2014, including the petitioner's name in the appropriate place in the panel for the year 2008-2009 for promotion as Forester. However, the petitioner was issued monetary benefits only from the date of joining duty as Forester, instead of from the date of retrospective promotion. Further, his leave period was not regularised as prayed for the petitioner. Therefore, the petitioner preferred an appeal before the third respondent. However no order has been passed in the appeal filed by the petitioner. Hence the petitioner filed this writ petition with the above prayer.

5. Heard the learned counsel appearing on either side and perused the material placed on records.

6. On perusal of counter filed by the second respondent revealed that after order passed by this Court, the petitioner was selected in the panel for the year 2008-2009 and he was placed in Sl.No.222 above his immediate junior. As per ruling 17 of Rule 27 of the Fundamental Rule of Tamil Nadu Government Servant, in case where a government servant has been overlooked for promotion/appointment to



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the next higher post but subsequently promoted/appointed to that higher post after restoration of his original seniority on appeal, his pay shall be fixed on the date of assumption of charge on the higher post on par with the pay of his juniors provided he has drawn the same rate of pay as his junior in the lower post from time to time. If he has not drawn the same rate of pay as his junior in the lower post, his pay shall be fixed on the date of assumption of charge, at the stage at which he would have drawn pay on the date had he been promoted/appointed to the higher post along with his junior. In case where seniority has been restored on or after 19th September, 1981, arrears of pay and allowance consequent of fixation of pay shall be admissible with effect from the date of assumption of charge in the higher post. In case where seniority has been restored prior to 19th September 1981, arrears shall be admissible only with effect from the above date.

7. Accordingly, the salary of the petitioner is fixed notionally with effect from the date of joining of his immediate junior and the pay benefits have been given from the date of assumption of charge in the post of Forester. Therefore, according to leave rules, the period of absent



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from duty was regularized as follows :-

11.11.2008 to 13.04.2009	154 days	Earned leave
14.04.2009 to 12.07.2009	90 days	Unearned leave on private affairs
13.07.2009 to 02.05.2010	294 days	Leave without pay and allowances
01.07.2010 to 11.07.2010	11 days	Unearned leave on medical certificate
27.07.2010 to 08.08.2010	13 days	Unearned leave on medical certificate

8. Therefore, reversion period and his absent from duty period were regularized based on the Tamil Nadu Government Servants leave Rules and Fundamental Rules for Tamil Nadu Government Servants. Hence the claim of the petitioner for arrear of pay from the date of joining of his immediate junior has no merit as per Rules in force. Hence, the prayer sought for in this writ petition is devoid of merits and liable to be dismissed.

9. Accordingly, the Writ Petition stands dismissed. There shall be no order as to cost.

18.07.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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Environment and Forest Department,
Secretariat, Chennai – 9.
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G.K.ILANTHIRAIYAN. J.

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